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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,070	07/25/2001	Aaron Joel Loyd	10006615-1	6454

7590 04/07/2005  
HEWLETT-PACKARD COMPANY  
Intellectual Property Administration  
P.O. Box 272400  
Fort Collins, CO 80527-2400

EXAMINER

PHILLIPS, HASSAN A

ART UNIT	PAPER NUMBER
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2151

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/915,070	LOYD, AARON JOEL	
	<b>Examiner</b>	<b>Art Unit</b>	
	Hassan Phillips	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3,7-9,13,17,19-21 and 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,7-9,13,17,19-21 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*the*

## **DETAILED ACTION**

### ***Response to Amendment***

1. This action is in response to amendments filed on February 7, 2005.

### ***Specification***

2. After consideration of the amendments made to the specification to correct minor errors, the Examiner has withdrawn the objection to the disclosure.

### ***Claim Rejections - 35 USC § 112***

3. After consideration of the amendments made to claim 8 to correct antecedent basis issues, the Examiner has withdrawn the rejection of claim 8 under 35 USC 112, second paragraph.

### ***Response to Arguments***

4. Applicant's arguments filed February 7, 2005 have been fully considered but they are not persuasive. Applicant argued that: Waclawsky does not teach monitoring the utilization of data paths. Examiner respectfully submits that Applicant has misinterpreted the prior art of record.

In regards to Applicants arguments Waclawsky clearly teaches monitoring the utilization of some media, or network component in col. 12, lines 22-43. Waclawsky further suggests monitoring the utilization of data paths in col. 7, line 60 through col. 8,

line 6 where Waclawsky teaches effecting routing changes after being provided with an indication that current network operating characteristics are outside the bounds of normal behavior. Thus, if not implicit in the teachings of Waclawsky, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Waclawsky to show monitoring the utilization of data paths. This would have allowed for determining when the operating characteristics of a data path are outside the bounds of normal behavior, Waclawsky col. 7, lines 16-34.

Furthermore, it is the Examiner's position that Applicant has not yet submitted claims drawn to limitations, which define the operation and apparatus of Applicant's disclosed invention in a manner that distinguishes over the prior art.

Failure for Applicant to significantly narrow definition/scope of the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response and reiterated the need for Applicant to define the claimed invention more clearly and distinctly. Accordingly the references supplied by the examiner in the previous office action covers the claimed limitations. The rejections are thus sustained. Applicant is requested to review the prior art of record for further consideration.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3, 7-9, 13, 17, 19-21, 24, are rejected under 35 U.S.C. 103(a) as being unpatentable over Waclawsky et al. (hereinafter Waclawsky), U.S. Patent 5,974,457 (supplied by Applicant).

7. In considering claims 1 and 13, Waclawsky teaches a method and monitoring device for monitoring the operation of an electronic network, the network comprising a first electronic device and a second electronic device, the method comprising: determining the utilization of some media, or network component between the first electronic device and the second electronic device, (col. 7, lines 18-20, and col. 12, lines 22-43); comparing the utilization of the media over a period of time, (col. 7, lines 18-20); and providing an indication if the utilization of the media increases or decreases a preselected amount during the period of time, (col. 7, line 20 through col. 8, line 6).

Although the method taught by Waclawsky shows substantial features of the claimed invention, it fails to expressly disclose: the media being a plurality of data paths.

Nevertheless, Waclawsky does teach: effecting routing changes after being provided with an indication that current network operating characteristics are outside the bounds of normal behavior, (col. 7, lines 60-67, col. 8, lines 1-6).

Thus, if not implicit in the teachings of Waclawsky, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Waclawsky to disclose the

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media as a plurality of data paths. Doing so would have demonstrated a specific example of how the teachings of Waclawsky could be used to monitor data paths, and determine when a data path is no longer operating normally, Waclawsky col. 7, lines 16-34.

8. In considering claim 3, the teachings of Waclawsky provide a means for determining the utilization of a first data path and a second data path by performing a plurality of measurements, (col. 7, line 16 through col. 8, line 6).

9. In considering claims 7 and 19, the teachings of Waclawsky provide a means for performing a plurality measurements of a parameter of the network on a first data path, and wherein the providing an indication comprises providing an indication if the value of at least one of the plurality of measurements exceeds the value of the average of previous measurements by a preselected amount, (col. 4, lines 55-67, col. 5, lines 1-4).

10. In considering claims 8 and 20, although the method taught by Waclawsky shows substantial features of the claimed invention, it fails to expressly disclose: Not using exceeded average values of measurements, or preselected values, to calculate subsequent average values.

Nevertheless, Waclawsky does teach: A benchmark that can accumulate a more accurate average than a predefined average, (col. 4, lines 55-67, col.5, lines 1-4).

Hence, it would have been apparent to one of ordinary skill in the art that the teachings of Waclawsky provide a means for not using exceeded average values of measurements, or preselected values, to calculate subsequent average values, and thus it would have been obvious for a person of ordinary skill in the art to modify teachings of Waclawsky to show this. Doing so would have demonstrated a specific example of how the teachings of Waclawsky could be used to progressively accumulate a more accurate representation of expected behavior for a network.

11. In considering claims 9 and 21, although the method taught by Waclawsky shows substantial features of the claimed invention, it fails to expressly disclose: Providing an indication if a measurement exceeds the mean plus three times the square of the mean of a previous measurement.

Nevertheless, Waclawsky does teach: Providing an indication if a measurement exceeds the bounds of normal behavior, col. 7, lines 60-67, col. 8, lines 1-6.

Hence, it would have been apparent to one of ordinary skill in the art that the teachings of Waclawsky provide a means for indicating if a measurement exceeds the mean plus three times the square of the mean of a previous measurement, and thus it would have been obvious for a person of ordinary skill in the art to modify teachings of Waclawsky to show this. Doing so would have demonstrated a specific example of how the teachings of Waclawsky could effectively be used to monitor the operation of an electronic network, Waclawsky col. 7, lines 16-34.

12. In considering claim 17, Waclawsky teaches the parameter being response time, (col. 8, lines 39-49).

13. In considering claim 24, Waclawsky teaches providing a plurality of measurements of a parameter of the network on a first data path between the first electronic device and the second electronic device, and wherein the providing an indication comprises providing an indication if the values of the plurality of measurements exceed a preselected value for a preselected period, (col. 7, line 16 through col. 8, line 6).

### ***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of



the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hassan Phillips whose telephone number is (571) 272-3940. The examiner can normally be reached on M-F 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HP/  
4/1/05

  
**ZARNI MAUNG**  
**SUPERVISORY PATENT EXAMINER**